



EXHIBIT 4
DATE 3/17/09
SB 437

11 March 2009

Dear Member of the House Fish, Wildlife and Parks Committee:

My name is William Kleindl. I own and operate a natural resources consulting firm called Naiad Aquatic Consultants, LLC. I have been a consultant in 15 years, specializing in restoration of streams and wetlands. I am a certified professional wetland ecologist through the Society of Wetland Scientist. Besides restoring streams and wetlands, I have also been contracted to construct private fish ponds.

As a professional aquatic consultant with 20 years of experience in restoring aquatic habitats, I am lending my support SB 437. And I urge you to do the same. SB 437 is a modest, common-sense bill that prohibits applicants for new fish ponds from using exempt groundwater well. This merely requires prospective pond owners to instead get groundwater permits. This will help ensure that the potential effects of new ponds is examined, thereby adding protection to senior water right holders and existing uses that can be effected by the consumptive use of fish ponds.

SB 437 will not result in any new fish ponds in Montana. It will result instead in a better understanding of how they can individually and collectively affect local water sources and senior water rights. There are more than 5,000 permitted fish ponds in Montana, and probably hundreds more without permits. Ponds consume water through evaporation. Vegetation around ponds transpires water, and ponds can interrupt the timing of local ground and surface water discharges. They have an effect, and it's reasonable and fair to require those that need a groundwater well to get a groundwater permit so effects can be examined.

Opponents say this bill will adversely affect existing ponds permitted by Montana FWP. It does not. It has no effect on currently permitted ponds that are in compliance. It affects only new applications for new ponds. Opponents say this bill will require FWP to nullify the use of existing wells for existing ponds through the pond-license renewal process. That is not true. Renewals don't require a new license. Opponents say if somebody forgets to renew their license at the end of the 10-year period, this bill will result in the loss of the use of their well. That, too, is incorrect. And any nervousness about a license expiring can easily be remedied by renewing on time.

This is a good bill, and it only requires that the water use for new private trout ponds, which are much less a necessity and more a luxury than, say, stockwater ponds, be evaluated. This will help protect senior water users, streams and the public's trout.

William Kleindl

A handwritten signature in black ink, appearing to be 'W. Kleindl', written over a horizontal line.

President, Naiad Aquatic Consultants, LLC.

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TO: Members of the House Fish, Wildlife and Parks Committee:
DATE: March 16, 2009
FROM: Todd Hoitsma, Natural Resource Consultant

As a small business owner, I have been in the profession of stream restoration, revegetation, and both pond and wetland construction and management for nearly 20 years.

Over the years I have built fish ponds and expect do so in the future. But many trout ponds have negative impacts on ground water and surface water. With more pressure on our limited water resources I believe it is time to provide some oversight to the trout pond construction process. I therefore support SB 437 because it prohibits applicants for new fish ponds from using exempt groundwater wells. Obtaining a groundwater permit should be a standard procedure in pond-building and it will result in a better understanding of how fish ponds affect local water sources and senior water rights.

It seems that there are some misunderstandings regarding this bill.

- It will not nullify the use of existing wells for existing ponds through the pond-license renewal process.
- It has no effect on currently permitted ponds that are in compliance.
- It affects only new applications for new fish ponds.
- SB 437 will not STOP construction of fish ponds in Montana.

In view of these issues please consider supporting SB 437.

Thanks very much

Todd Hoitsma
todd@hoitsmaeco.com

Permitted Fish Ponds in Montana

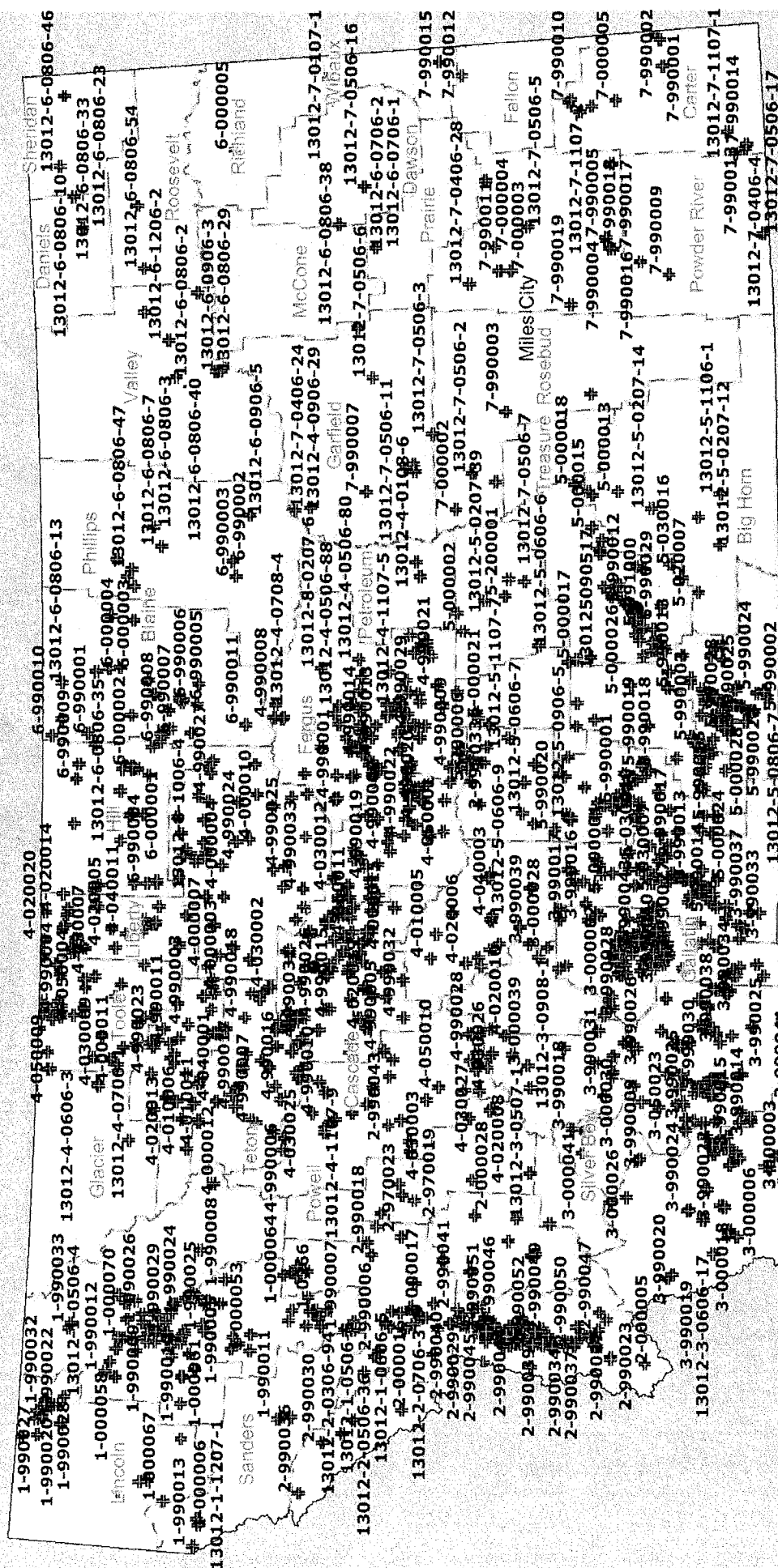


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SB 437: Fact versus Fiction

**Montana Trout Unlimited
March 2009**

SB 437, a simple and modest bill, does only one thing: It prohibits future licensed fish ponds in Montana from using "exempt" groundwater wells as a water source. The intention of the bill is to make more accountable an expanding use of consumed water in the state, protect existing senior water rights from expanding fish pond development and protect existing water sources that could be affected by new ponds. Montana currently has more than 5,000 licensed fish ponds, and hundreds and perhaps thousands more that are unlicensed. Fish ponds consume water through evaporation and transpiration. Individually and collectively they can reduce flows to streams where there are senior water rights.

SB 437 is merely intended to no longer exempt fish ponds from groundwater permits, thereby helping ensure their consumption of water is accounted for and other water users are better protected. Without **SB 437** and its "look before you leap," evaluate-as-you-go approach, there is no way to ever determine how many fish ponds are too many before existing water rights are harmed.

Opponents of the bill, primarily a few consultants who construct fish ponds and brokers of large recreational properties, have been spreading inaccurate information about what this measure will do and the intentions of those who support it. The following responds to some of the misinformation about **SB 437**.

- ***Will SB 437 will end all new fish pond development in Montana?***

Not at all. **SB 437** only eliminates the use of an unregulated way to provide water for new ponds. Landowners proposing new fish ponds can still get water by changing the use of an existing consumptive water right, or by obtaining a regular groundwater permit. These approaches can require showings about how the new right might affect downstream senior water-right holders. Both approaches allow senior water right holders to object to DNRC if the new pond adversely affects their existing water use. Obtaining exempt wells does not trigger a permit or evaluation of effects on other water users, nor does it provide an opportunity for an existing water right holder to protect his right. The threshold for an exempt well is 35 gallons per minute and 10 acre-feet a year. Today, if you use, say, 36 gallons per minute and 10.1 acre-feet per year you must get a groundwater permit.

- ***Does SB 437 makes it impossible to get water in a basin that is closed to new water rights, such as the upper Missouri River basin?***

No. It is possible to get a new groundwater permit in a closed basin such as the Upper Missouri River basin, much as new developments are doing. The applicant has to demonstrate the new well will not result in net depletion to an existing surface water source. If there is net depletion, an applicant can still get a groundwater permit by finding

replacement water for that lost to the stream. You can do that by borrowing, leasing or purchasing water. Basins are closed because there are already enough water rights than there is surface water. That is why in order to get a new right you must replace water that is already spoken for.

- ***Does SB 437 affect existing ponds with exempt wells by making them illegal immediately or even later when landowners seek to renew their license after 10 years?***

No, SB 437 amends only the part of the private pond statute MCA 87-4-603 that applies to **new** licenses. Further, MCA 87-4-606 (3) (d) clearly states that, "*the department shall renew the license if the licensee... has not violated any condition upon which the license was granted.*" This means if you have a licensed pond today that is fed by an exempt well, you will not lose you license upon renewal just because of SB 437. The condition upon which you received the license originally included a groundwater permit exemption.

- ***Does SB 437 prohibit the transfer of existing fish pond licenses that use exempt wells to new landowners?***

No. MCA-4-606 (5) (b), which SB 437 does not change, clearly states that fish pond licenses are transferable. It states, "*If ownership or control of the private fish pond changes, the new owner or operator shall apply to the department for a license transfer.*" Because the pond was originally was approved with an exempt well, this cannot be a cause for disapproving a transfer.

- ***Will passage of SB 437 result in illegal introductions of fish in Montana?***

Illegal fish introductions, unfortunately, already occur on a frequent basis in Montana. Montana FWP has documented some of this occurring in both licensed and unlicensed ponds, as well as in public waters. This bill will neither promotes nor ends bucket biology. It is reasonable to assume that businesses who construct private ponds in the state will inform landowners that stocking ponds without a license is illegal.

- ***Why doesn't SB 437 target exempt wells that are used for watering stock?***

Most new wells for stockwater feed stock tanks, not large ponds. Their consumption is negligible. Most are located well away from streams. Further, stock tanks are necessary for ranchers to make a living and sometimes they help protect streams by directing cattle away from sensitive riparian areas, or they save water in-stream by being an alternative to direct diversions from streams. In any event, SB 437 does not stop new private fish pond construction in Montana. It merely helps ensure new ponds don't harm existing rights.